

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DORMONIC MONTELARY JONES,)
)
Petitioner,)
) 1:22-cv-735
v.) 1:07-cr-112-1
)
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

The matter is before this court for review of the Order and Recommendation ("Recommendation") filed on September 14, 2022, by the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b). (Doc. 58.) The Recommendation was served on the parties in this action on September 14, 2022. (Doc. 59.) Petitioner timely filed objections, (Doc. 60), to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

None of Petitioner's objections have merit. The only one that may require some additional discussion (because Petitioner asserts it for the first time in his objections by way of a purported clarification of a claim raised in his initial pleading) is Petitioner's assertion that the First Step Act of 2018 causes the Fair Sentencing Act of 2010 to apply retroactively to his case to reduce his sentence. (Doc. 60 at 4-5.)

However, because Petitioner previously made such a motion which the Court granted to the extent it reduced his term of supervised release, (Doc. 47), he cannot now bring another motion under the First Step Act. The First Step Act permits the court one—and only one—opportunity to entertain a motion under that statute. See, e.g., United States v. Bryant, 776 Fed. App'x 822, 823 (4th Cir. 2019) ("Our review discloses that the court denied Bryant's first motion to reduce his sentence under the First Step Act on the merits, in its order denying reconsideration. Accordingly, the district court lacked jurisdiction under § 404(c) to consider the instant motion."); United States v. Taylor, No. 1:08CR211-1, 2021 WL 1341818, at *3 (M.D.N.C. Apr. 9, 2021) (Schroeder, J.) ("This court previously reduced Taylor's sentence as a result of his initial First Step Act motion, and the statute prohibits a second such motion. The court therefore denies that request on that ground."); United

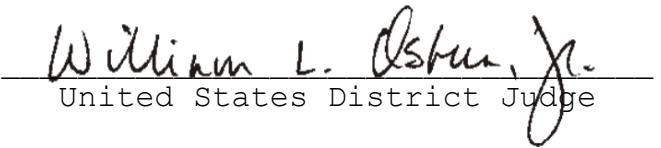
States v. Tillman, No. No. 1:10-466-JFA, 2023 WL 1802116, at *5 (D.S.C. Feb. 7, 2023) ("Judge Seymour has already reduced the defendant's sentence under FSA § 404(b) and this court is prohibited from entertaining another successive motion under § 404(c)."); United States v. Bennett, No. 2:07-CR-00924-DCN, 2020 WL 3964852, at *2 (D.S.C. July 13, 2020) ("The First Step Act permits the court one—and only one—opportunity to entertain a motion under that statute. First Step Act § 404(c), 132 Stat. at 5222.").

This court has appropriately reviewed the portions of the Recommendation to which the objections were made and has made a *de novo* determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 58), is **ADOPTED**. **IT IS FURTHER ORDERED** that this action be filed and, is hereby, **DISMISSED WITHOUT PREJUDICE** to Petitioner promptly filing a corrected motion on the proper § 2255 forms or seeking compassionate release. The court further finds there is no substantial showing of the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, therefore a certificate of appealability is not issued.

A Judgment dismissing this action will be filed contemporaneously with this Order.

This the 19th day of July, 2023.



United States District Judge